



State of New Jersey
Council on Affordable Housing

101 SOUTH BROAD STREET
PO BOX 813
TRENTON NJ 08625-0813
(609) 292-3000
(609) 633-6056 (FAX)

JON S. CORZINE
Governor

JOSEPH V. DORIA, Jr.
Commissioner

LUCY VOORHOEVE
Executive Director

December 24, 2007

COAH's Revised Third Round Rules

Dear Mayor:

On December 17, 2007, the New Jersey Council on Affordable Housing (COAH) proposed its revised third round affordable housing regulations. The regulations continue a growth share approach, wherein municipalities provide for affordable housing in proportion to market-rate residential and non-residential growth in their communities.

Highlights of the revised regulations are provided below.

- **New Growth Share Ratios** –The new ratios require one affordable unit among five residential units and one affordable unit for every 16 jobs (previous ratios were one affordable unit among nine residential units and one affordable unit for every 25 jobs). In total, COAH has determined a need for 115,666 affordable housing units between 1999 and 2018 (previous estimates were 52,000 units through 2014). The major factor behind the increased affordable housing need and change in ratios was the Court's directive that COAH update the filtering data and the resulting reduction in the number of units that filter to low- and moderate-income households (filtering is the process by which previously unaffordable market units filter down to low- and moderate-income households).

The proposal provides household and employment growth estimates for each municipality, which serve as planning targets when preparing the affordable housing plan. Municipalities may seek adjustments to these planning targets based on lack of available land.

- **Increased Funding for Affordable Housing** -- To help municipalities finance affordable housing programs, development fee maximums will increase, from 1% of equalized assessed

value (EAV) for residential to 1 ½% of EAV and from 2% of EAV to 3% of EAV for non-residential development.

Legislation is being considered to establish a statewide development fee bank that would uniformly charge non-residential developers a flat fee, the proceeds of which would be deposited into a statewide fund for affordable housing. This bank is projected to generate \$60 to \$80 million per year in revenues for municipalities to meet affordable housing obligations. In the meantime, the proposed regulations continue municipalities' ability to require payments in lieu of non-residential developers pending adoption of the legislation.

- **Increased Flexibility** - The rules expand the period of need from 1999 through 2014 to 1999 through 2018, providing a full 10 years from the effective date of COAH's rules for municipalities to address their affordable housing obligations. The revised rules permit municipalities to use a phased approach in meeting their obligations over the 10-year period. Bonus credit is offered for the provision of supportive and special needs housing, family rental housing, and very low-income housing and flexibility is added to a number of existing programs, including the accessory apartment program. Additionally, the spending plan review process has been streamlined to enable municipalities to fund affordable housing prior to substantive certification.
- **Inclusionary Zoning Provisions** – In accordance with the Appellate Division's January 25, 2007 decision, the proposed regulations require municipalities to offer a compensatory benefit to developers of one additional market unit for every affordable unit constructed. A reduced benefit of ½ of a market rate unit for every affordable unit would be required for developers electing to make a payment in lieu of construction rather than building the affordable housing on-site. The additional market rate units offered as a compensatory benefit would not generate a growth share obligation. The proposal also includes a payment in lieu standard by region (cost of constructing an affordable unit) averaging \$161,000 per affordable unit.
- **Growth Share Ordinances** -- Municipalities are encouraged to adopt revised inclusionary zoning ordinances (commonly known as "growth share ordinances") to maximize opportunities for affordable housing as soon as possible. Revised inclusionary zoning ordinances should take into consideration the above noted payment in lieu maximums for residential development. COAH is considering seeking the lifting of the stay of the municipal zoning ordinances that was previously granted by the court, given that the new proposal has been released and that revised municipal ordinances may be adopted to better capture additional affordable housing opportunities at this time.

With regard to the non-residential obligation, the current proposal permits municipalities to require affordable housing or payments in lieu from non-residential growth. However, the legislation outlined above would instead permit municipalities to collect a development fee from non-residential developers, currently proposed at 3 percent of equalized assessed value. Municipalities are encouraged to keep this potential legislation in mind and the possible lifting of the stay and expeditiously draft revised inclusionary zoning ordinances.

- **Regional Contribution Agreements** - The proposed regulations continue to permit municipalities to transfer up to 50 percent of their obligations to other municipalities within the COAH region, pursuant to the Fair Housing Act. The Regional Contribution Agreement (RCA) minimums are proposed to increase from \$35,000 per unit to \$67,000 to \$80,000 per unit reflecting the blended average of rehabilitation costs and new construction costs for affordable housing by region. Agreements between municipalities that were entered into before December 17, 2007 would be grandfathered at the lower dollar amounts.
- **Age-Restricted Housing** – The previous cap of 50 percent on age-restricted housing has been reduced to the second round cap of 25 percent of the total obligation.
- **Rehabilitation Share** - COAH's consultants updated the number of units in need of rehabilitation for each municipality to reflect the extended timeframe of 2018. These updates show a need for approximately 51,000 units in need of rehabilitation. Municipalities may receive credit for housing that has been rehabilitated in their communities since 2000.
- **Prior Round New Construction Obligations** - Recognizing that many municipalities have participated in the COAH process since the mid-1980s, and in an effort to provide certainty and predictability, COAH elected to reinstate the 1993 new construction obligations under which towns were certified for the second round period (1987 to 1999).

The rules are scheduled to be published in the January 22, 2008 New Jersey Register. COAH will be holding five public hearings throughout the State in January and February of 2008. COAH encourages municipal representatives to attend the public hearings or submit written comments to COAHmail@dca.state.nj.us until March 22, 2008. The proposed rules are also available on COAH's website (www.nj.gov/dca/coah).

It is anticipated that final regulations would become effective in June 2008. Under the rule proposal, a schedule has been established by county so that municipalities would have until September through December of 2008 to submit revised affordable housing plans to COAH.

Additionally, COAH is planning a series of seminars upon adoption of the revised regulations that would assist municipal officials, planners, and members of the public in understanding and using the revised third round rules. COAH is committed to providing increased flexibility and a streamlined process for municipalities, and COAH staff is available to meet with municipalities to assist in answering questions and preparing affordable housing plans.

During the coming months leading up to final adoption of the revised rules, we strongly encourage municipalities to continue to provide affordable housing and to take steps now to adopt revised inclusionary zoning ordinances to capture affordable housing opportunities as growth takes place. We remain committed to working with you to take the necessary steps to fulfill your municipality's affordable housing obligation and are committed to providing a streamlined, more flexible process. As an example, COAH has granted several waivers enabling municipalities without approved spending plans or substantive certification to expend funds on

emergent affordable housing opportunities. For more information, including details on how to request such a waiver, contact us at (609) 292-3000.

If you have additional questions, please send them to COAHmail@dca.state.nj.us.

Sincerely,

A handwritten signature in black ink that reads "Lucy L. Voorhoeve". The signature is written in a cursive style with a long, sweeping underline.

Lucy Voorhoeve
Executive Director